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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)
LEHMAN BROTHERS INC.,) 08-01420 (JMP) SIPA
Debtor.)

OBJECTION TO THE TRUSTEE'S DETERMINATION OF CLAIM

Pinnacle American Core Plus Bond Fund (“Pinnacle”), by and through its undersigned counsel, respectfully submits this Objection to the Trustee’s Determination of Claim, as further set forth below, as states as follows:

1. On January 28, 2009, Pinnacle filed claim numbers 900002751 and 900005683 against Lehman Brothers Inc. (“LBI”) relating to payments for a foreign exchange transaction.
2. LBI sent a Notice of Trustee’s Determination of Claim to Pinnacle dated September 28, 2009 denying Pinnacle’s claim. Attached as Exhibit A is the Notice of Trustee’s Determination of Claim.
3. Pinnacle and Lehman Brothers Special Financing (“LBSF”) entered into a foreign exchange transaction that involved an exchange between Euros and U.S. dollars that was established on August 27, 2008 and had a value date of August 28, 2008 (“Foreign Exchange

Transaction"). Under the terms of the agreement, Pinnacle was to pay 201,000 Euros to LBSF and would receive \$295,486.68 from LBSF.

4. According to the wire instructions provided by "Lehman Brothers" ("Lehman Wire Instructions"), payments to LBSF in Euros for foreign exchange transactions were to be made to LBI by or on behalf of LBSF. Specifically, counterparties were instructed to send the funds to LBI's Nostro Account at Citibank, London. Attached as Exhibit B are the Lehman Wire Instructions which are entitled "Foreign Exchange Standard Settlement Instructions for Lehman Brothers Special Finance Inc. (SLHIUS3S) effective February 14, 2007."

5. In accordance with the Lehman Wire Instructions, on September 16, 2008, the sending bank for the custodian for Pinnacle, Deutsche Bank, Frankfurt, wired to LBI Euro 201,000 for the Foreign Exchange Transaction (wire number 03MT080828102186) to LBI's account (GB23 CITI 1850 0810 6404 09) at Citibank, London. Deutsche Bank, Frankfurt, mistakenly wired the funds for the Foreign Exchange Transaction, Euro 201,000, two additional times. Although Pinnacle made three payments for the transaction, it received the \$295,486.68 for the exchange once. Attached as Exhibit C are the trade ticket and confirmation from the order system of Logan Circle Partners, L.P., an investment adviser to Pinnacle, showing the details of the wire transfers from Pinnacle to LBI.

6. However, the extra two payments of Euro 201,000, worth \$581,492.98, that Pinnacle sent to LBI for the Foreign Exchange Transaction were never returned.¹ Upon information and belief, LBI is still in possession of the surplus \$581,492.98 that Pinnacle wired for the Foreign Exchange Transaction. LBI will be unjustly enriched at the expense of Pinnacle

¹ The payments by Pinnacle were converted to dollars using the exchange rate as of September 19, 2008, the filing date for LBI. In calculating the amount owed by LBI on its claim form, Pinnacle inadvertently used the exchange rate agreed upon for the Foreign Exchange Transaction. Attached as Exhibit D is a screenshot from Bloomberg with the Euro to dollar conversion rate as of September 19, 2008.

if it does not return the \$581,492.98 it received from Pinnacle. *See Compudyne Corp. v. Shane*, 453 F. Supp. 2d 807, 833 (S.D.N.Y. 2006) (noting that counterparties to securities transactions may have an unjust enrichment claim for funds transferred for a securities transaction). Alternatively, as Pinnacle transferred the \$581,492.98 in reliance of a promise by a fiduciary, its securities broker, and LBI would be unjustly enriched by keeping the \$581,492.98, Pinnacle is entitled to a constructive trust on funds transferred to LBI. *See U.S. v. Lesak*, No. 07-0396, 2009 WL 1788411, slip op. (S.D.N.Y. June 23, 2009) (holding customer was entitled to a constructive trust against a third party on funds transferred to a broker-dealer for a securities purchase that was not effected).

7. Therefore, as Pinnacle transferred an excess \$581,492.98 to LBI for the Foreign Exchange Transaction described above and these funds were not returned to Pinnacle, LBI owes Pinnacle \$581,492.98.

Dated: October 27, 2009



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